Supreme Court, U. S.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1972

No. 71-1182

RAYMOND MATTZ,
PETITIONER
v.
G. RAYMOND ARNETT, AS DIRECTOR OF THE DEPARTMENT OF FISH AND GAME OF THE STATE OF CALIFORNIA,
RESPONDENT.

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FIRST APPELLATE DISTRICT

BRIEF FOR THE PETITIONER

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OPINION BELOW

The opinion of the Court of Appeal of the State of California is reported at 20 Cal. App.3d 729, 97 Cal. Rptr. 894 and is reproduced in Appendix A to the

Petition For A Writ of Certiorari.

JURISDICTION

The judgment of the Court of Appeal was entered on October 21, 1971. The California Supreme Court denied a petition for hearing on December 16, 1971. The petition for a writ of certiorari was due on or before March 15, 1972. (American Railway Express Co. v. Levee, 263 U.S. 19, 21 (1923).) The petition was filed March 14, 1972, and was granted January 15, 1973. This Court has jurisdiction pursuant to 28 U.S.C. §1257(3).

STATUTES INVOLVED

The Act of June 17, 1892 (27 Stat. 52) and 18 U.S.C.§§1151 and 1162 are set out in Appendix A of this brief.

QUESTION PRESENTED

Did the Act of June 17, 1892 abolish part of the 1891 Extension to the Hoopa Valley Indian Reservation by permitting non-Indians to homestead within that part on parcels which Congress considered beyond the Indians' needs?

STATEMENT OF THE CASE

Yurok Indian life centers on the lower Klamath River near the Pacific

Ocean. (Kroeber, Handbook of the Indians of California 1, 8-9 (1925), A. 41-44.) Fish--taken with dip and gill nets, seines, and harpoons--has always been a staple of the Yurok diet. (Kroeber, supra, at 84-86, A. 34-40.)

The Mattz family is Yurok. (A. 29, 31.) Petitioner's mother, Geneva Mattz, has an Indian trust allotment on the Klamath River at Brooks Riffle. (A. 29.) The Riffle is named after petitioner's grandfather (A. 29), who fished there with dip, gill, and trigger nets. (A. 30.) Yuroks have fished there all Geneva Mattz's life. (A. 30.) Petitioner Raymond Mattz has been fishing with gill nets near Brooks Riffle since he was nine. (A. 32-33.)

On September 4, 1969, a California game warden confiscated five fishing nets belonging to Raymond Mattz. (C.T. 75-76, Appendix B to Petition For A Writ Of Certiorari at 4.) The nets were seized from a stowage approximately 200 feet from the Klamath River, in the vicinity of Brooks Riffle, and within twenty miles of the Pacific Ocean. (C.T. 71, 75-76, Appendix B to Petition For A Writ of Certiorari at 2, 4.)

Claiming that possession of such nets in that area violated state law, respondent Director of the California Department of Fish and Game instituted a forfeiture proceeding in the Del Norte County Superior Court. (A. 3-6.) Raymond Mattz intervened and asked for return of his nets. (A. 6-9.) He alleged that he is an enrolled Indian, that the nets were in "Indian Country," and that the state's fishing laws were therefore inapplicable. (A. 7-8.)

The superior court ruled that the nets were seized on the 1891 Extension to the Hoopa Valley Indian Reservation but that the Act of June 17, 1892, had terminated the twenty miles of the Extension closest to the Pacific by opening that region for public purchase. (C.T. 71, 75-76, Appendix B to Petition For A Writ of Certiorari at 1-2, 4-5.) The court also determined that the seizure occurred on land of the Simpson Timber Company (C.T. 75-76) and not on Geneva Mattz's adjacent allotment (A. 29). Accordingly, the court found that the nets were seized outside Indian country and subject to forfeiture

under California's fishing laws. (C.T. 76-77, Appendix B to Petition For A Writ of Certiorari at 5.)[1]

The Court of Appeal affirmed (Appendix A to Petition For A Writ of Certiorari); and the California Supreme Court denied petitioner a hearing (Appendix C to Petition For A Writ of Certiorari).

SUMMARY OF ARGUMENT

The Act of June 17, 1892, did not terminate the reservation status of the oceanward (or lower) twenty miles of the 1891 Extension to the Hoopa Valley Indian Reservation. Continued reservation status is not inconsistent with a provision in the 1892 Act permitting non-

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1. The superior court did not decide whether the seizure would have been lawful if made in Indian country.

The Court of Appeal indicated in dicta that 18 U.S.C. §1162 authorizes California to apply state fishing laws on a reservation unless a federal treaty, agreement or statute establishes special Indian fishing rights. That is an incorrect statement of the law. State laws also do not apply where fishing rights are afforded under federal regulations. (Metlakatla Indian Community v. Egan, 369 U.S. 45, 56-57 (1962); Donahue v. California Justice Court, 15 Cal. App. 3d 557 (1971), cert. denied 404 U.S. 990 (1971).)

Indians to homestead parcels which Congress considered beyond the Indians' needs. The contrary ruling of the Court of Appeal is inconsistent with 18 U.S.C. §1151 which defines Indian country as including patented land within a reservation.

. A statute terminates a reservation only when Congress' intent to do so is clear. That intent is not present in the Act of June 17, 1892. The oceanward twenty miles of the Extension were not restored to the public domain. Instead the Government sold the "surplus" land as the Indians' trustee and was required to credit the money to the Indians' account. Congress deleted from the Act a provision that would have called for removal of the Indians from the disputed area.

BIA maps drawn soon after the Act's passage and present BIA maps both show the lower twenty miles of the Extension as part of a reservation. In addition, prior rulings in a court of Claims case and by the Interior Department support petitioner's view that the Act of June 17, 1892 did not terminate any part of the 1891 Hoopa Extension.

ARGUMENT

I

THE ACT OF JUNE 17, 1892, REVEALS NO CONGRESSIONAL INTENT TO TERMINATE THE RESERVATION STATUS OF THE OCEANWARD TWENTY MILES OF THE HOOPA EXTENSION

Laws affecting Indians are to be construed in the way most favorable to the Indians. (Alaska Pacific Fisheries v. United States, 248 U.S. 78, 89 (1918); Choate v. Trapp, 224 U.S. 665, 675 (1912).) A statute removes land from a reservation only when Congress clearly intends that to happen. (See United States v. Celestine, 215 U.S. 278, 290-291 (1909).) The Act of June 17, 1892 (27 Stat. 52) evinces no such clear intent for the oceanward twenty miles of the 1891 Extension to the Hoopa Valley Indian Reservation.

A. The Act of June 17, 1892, Closely Resembles The 1906 Act Which Seymour v. Superintendent Held Did Not Abolish The South Half of the Colville Reservation.

In 1876 President Grant issued an Executive Order creating the Hoopa Valley Indian Reservation. (I Kappler, Indian Affairs--Laws and Treaties 815, A. 18-19.) It was roughly a twelve mile

square around the Trinity River just above its juncture with the Klamath River.

On October 16, 1891 President Harrison extended the boundaries of the Hoopa Valley Reservation to include a strip one mile on each side of the Klamath River from the then boundary of the reservation to the Pacific Ocean. (I Kappler, Indian Affairs--Laws and Treaties 815, A. 19.) That strip, about 40 miles long, is sometimes referred to as the Hoopa Extension.

The Act of June 17, 1892, provided that Indians living on the oceanward (or lower) twenty miles of the Extension[2] were to have one year to select allotments--pieces of land held in trust for individual Indians by the United States--from that portion of the Extension. After that the Secretary of the Interior was to reserve land being used for Indian villages. Any remaining land on the lower twenty was to be disposed of under the homestead acts and laws authorizing sale of mineral, stone, and timber lands. This "remaining"

2. This area was described in the 1892 law as "the lands embraced in what was [the] Klamath River Reservation." For an explanation of that description see part B of this section of the Argument.

land was not to be restored to the public domain, however. The proceeds of the land sales, rather than accruing to the Government, were to be held in trust for the maintenance and education of Indians residing on the lower twenty miles of the Extension.[3]

This is substantially the same legislative pattern to be found in the Act of March 22, 1906 (34 Stat. 80), which Seymour v. Superintendent, 368 U.S. 351 (1962), held did not terminate the South half of the Colville Reservation. There too allotments were made to individual Indians on the reservation, some land was reserved for communal purposes, unalloted and unreserved land was opened for homesteading and other types of non-Indian appropriation, and land sale proceeds were to be held in trust for the Indians.

This Court in Seymour contrasted the 1906 Colville statute with another statute pertaining to Colville, the Act of July 1, 1892 (27 Stat. 62). The 1892 law was held to have terminated the North half of the Colville Reservation by expressly restoring

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3. The uses of the trust fund were changed in an insignificant way by the Act of March 2, 1917 (39 Stat. 976).

it to the public domain and giving Congress the power to appropriate the proceeds for general public use.

Like the 1906 Colville Act and unlike the 1892 Colville Act, the 1892 Hoopa Extension Act contains no provision placing any lands in the public domain. Nor does the 1892 Hoopa Extension Act contain any language vacating the lower twenty miles of the Extension. (Compare the 1892 Colville Act.)

Like the 1906 Colville Act and unlike the 1892 Colville Act, the 1892 Hoopa Extension Act makes the United States trustee for reservation land sale proceeds rather than broker for sales of its own lands.

The non-Indian homesteading allowed by the 1892 Hoopa Extension Act is not inconsistant with reservation status for the Extension's lower twenty miles. The contrary conclusion of the Court of Appeal is simply not tenable in light of 18 U.S.C. §1151 which defines Indian country for purposes of 18 U.S.C. §1162 as including "all land within the limits of any Indian reservation...notwithstanding the issuance of any patent." Seymour v. Superintendent, supra, so held as does New Town v. United

States, 454 F.2d 121 (8th Cir. 1972).[4]

When Congress wishes to disestablish an Indian reservation, it knows how to do so and does it expressly and not by subtle implication. (See Section 3 of the Act of April 8, 1864 (13 Stat. 39): "shall not be retained for the purposes of Indian reservations;" Act of July 27, 1868 (15 Stat. 221) "reservation is hereby discontinued.") The 1892 Colville Act did so. The 1892 Hoopa Extension Act, passed two weeks earlier, did not.[5]

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4. The non-Indian ownership of the land where the nets were seized does not matter either. Non-Indian owned lands within a reservation are nevertheless part of that reservation. (18 U.S.C. §1151; Seymour, supra, 352 U.S. at 357-358; Hildebrand v. Taylor, 327 F.2d 205 (10th Cir. 1964); New Town v. United States, supra.)

5. Elser v. Gill Net Number One, 246 Cal.App.2d 30 (1966) states at 34:

> "Thus [after the 1892 Act], the lower 20 miles of the 40 mile long strip of land included in the 1891 extension of the Hoopa Valley Reservation, for all practical purposes almost immediately lost its identity as part of the Hoopa Valley Reservation." (Id. at 34.)

What the court meant by "for all practical purposes" is not clear. That lack of clarity is not surprising, however, for the case [footnote continued on next page]

B. The Phrase "Lands Embraced In What Was [The] Klamath River Reservation" In The Act Of June 17, 1892, Was Used Only For Purposes Of Demarcation And Not To Indicate A Change In The Land's Status

In 1892, when Congress opened up the lower twenty miles of the Hoopa Extension to non-Indian settlement, it described the affected land as "lands embraced in what was [the] Klamath River Reservation." That description was accurate because the Klamath River Reservation, which was created in 1855, had ceased to exist by 1876.

President Pierce established the Klamath River Reservation by Executive Order on November 15, 1855. (I Kappler, Indian Affairs--Laws and Treaties 816-817, A. 20-25.) It was a strip of land one mile wide on each side of the Klamath River from the Pacific Ocean up

involved events on the upper 20 miles of the Extension. Even if the statement were not dicta, however, it would show no more than that Indians have been ignorant of and too poor to enforce their legal rights. The status of land under 18 U.S.C. §§1151 and 1162 cannot be concluded even by a fifty year old state court decision. (Seymour v. Superintendent, supra, 268 U.S. 351 at 353.)

river until it included 25,000 acres. This distance turned out to be approximately twenty miles.

In 1864 a law was enacted which directed the President to establish four reservations for California Indians. (Act of April 8, 1864 (13 Stat. 39).) Section 2 of that law authorized the President to include existing reservations in the four reservations. Section 3 provided for the disposition of the "several Indian reservations in California which shall not be retained for the purposes of Indian reservations, under the provisions of the preceding section of this act." That is, the 1864 law expressly provided that existing reservations would cease to have the status of Indian reservations if not included in the four new reservations. (United States v. Forty-Eight Pounds of Rising Star Tea, 38 Fed. 400 (C.C.N.D. Cal. 1889).)

Between 1864 and 1876 the President created four reservations.[6] One of these

6. The dates when these four reservations came into existence is somewhat muddled because the President himself did not purport to create a reservation until long after the reservation had been recognized by other government officials. (See I Kappler, [footnote continued on next page]

was the Hoopa Valley Indian Reservation; but neither the Hoopa Valley Reservation nor any of the other three included the oceanward twenty miles along the Klamath River. The Klamath River Reservation therefore ceased to exist in 1876, at the latest; the 1892 Act simply cannot be construed to have terminated the Klamath River Reservation which had ceased to exist 16 years earlier.

However, in 1892 Congress could properly use the phrase "land embraced in what was [the] Klamath River Reservation" to describe the area which had long before been the Klamath River Reservation and which the President had added to the Hoopa Valley Reservation in 1891 as the Lower twenty miles of the Hoopa Extension. While the reasons for Congress' use of that dated description cannot be stated with absolute precision, at least three explanations are plausible.

First, the use of the phrase was

Indian Affairs--Laws and Treaties 815; Donnelly v. United States, 228 U.S. 243 (1913); United States v. Forty Eight Pounds of Rising Star Tea, 35 Fed 403, 405 (N.D. Cal. 1888), aff'd, 38 Fed. 400 (C.C.N.D. Cal. 1889).)

a convenient short-hand method of demarcating that land which was to be opened to non-Indian settlement. Only this area from among the forty miles of the Extension and the 12 mile square Hoopa Valley was to be available to non-Indians.

A second explanation was suggested by a Court of Claims commissioner in Jessie Short v. United States (No. 102-63). In a ruling of May 22, 1972, the commissioner wrote:

> Bills of this nature [i.e., like the Act of June 17, 1892] had been considered for many years on the premise that the Klamath River Reservation was abandoned (see findings 50-77, supra); the proponents were not about to make their cause less attractive by amending the name of the reservation to call it the former Klamath River Reservation, now part of the Hoopa Valley Reservation.

A third possibility is that sheer inadvertence caused Congress to describe the demarcated land by reference to the defunct Klamath River Reservation.

The 1892 Act was introduced in Congress on January 5 of that year. (23 Cong. Rec. 125.) The President issued the Executive Order creating the Hoopa Extension less than three months earlier. Congress may not have known of the President's action at the time of the bill's introduction. (See Section II, infra.)

In any case, describing part of the Extension with the phrase "lands embraced in what was [the] Klamath River Reservation" shows no clear Congressional intent to do away with any part of the Hoopa Valley Reservation or its Extension.

II

THE LEGISLATIVE HISTORY OF THE ACT OF JUNE 17, 1892, SHOWS NO INTENT TO TERMINATE THE RESERVATION STATUS OF THE LOWER TWENTY MILES OF THE HOOPA EXTENSION

The legislative history of the Act of June 17, 1892[7] reveals that the law was enacted because many non-Indians had settled on lands of the Klamath River Reservation after it ceased to be a reser-

7. H.Rpt.No. 161, 52d Cong., 1st Sess.; S.Misc.Doc.No. 153 52d Cong., 1st Sess.; 23 Cong.Rec. 125, 870, 1598-1599, 2301, 3918-3919, 3969, 4158, 4225, 4245, 4417, 4714, 4771, 4893, 5012, 5052, 5738.

vation. (Remarks of Representative Geary, 23 Cong. Rec. 1599 (Mar. 1, 1892); Remarks of Senator Felton, 23 Cong. Rec. 3919 (May 4, 1892).) Congress felt that these non-Indians had settled in good faith and should have their interests protected. (Remarks of Senator Pettigrew, 23 Cong. Rec. 4245 (May 13, 1892).)

An end to Indian use of the land was expressly rejected, however. The House version of the law (H.R. 38, 52d Cong., 1st Sess.) originally provided for removal of Indians from the lower twenty miles of the Extension. (23 Cong. Rec. 1599.) The Senate deleted the removal provision (23 Cong. Rec. 3918); and the law as adopted provided that Indians had a preferential right to allotments they occupied on the lower twenty prior to the statute's passage. Also, the law provided for the Secretary of the Interior to reserve Indian villages and settlements for continued Indian use.

The House debates and committee report do state that the bill was concerned with land in a "former" "abandoned" reservation, but that former reservation is clearly the long previously extinguished

Klamath River Reservation, not the Hoopa Extension. (H.Rpt.No. 161, 52d Cong., 1st Sess.)

In neither house was the 1891 Extension mentioned in the debates or the reports. Congress was seemingly unaware that a few months earlier the President had issued an Executive Order extending the Hoopa Valley Reservation down the Klamath River from the Hoopa Square to the Ocean.

The House Committee report says in that regard:

> "The Hoopa Valley Reservation is only about 20 miles to the east of the eastern boundary of this tract."

Senator Felton said:

> "There is an Indian reservation within 20 miles of the river, where these Indians [of the lower twenty] can go if they want to do so." (23 Cong. Rec. 3918-3919.)

Obviously, Congress could have had no intent, let alone the clear intent required by United States v. Celestine, supra, 215 U.S. 278, 290-291, to termin-

ate part of a reservation (the Hoopa Extension) which the House and Senate had not even discussed. (Cf. Menominee Tribe of Indians v. United States, 101 Ct.Cl. 10, 21 (1944).)

Congress merely wanted to sell (for the Indians' benefit) parcels of land which Congress felt were surplus to the Indians needs and which had been settled in good faith by non-Indians. Such a provision for sales to non-Indian homesteaders is fully consistent with reservation status for the area of the Extension out of which the parcels were sold. (Seymour v. Superintendent, supra, 368 U.S. 351.)

III

SUBSEQUENT LEGISLATION SUPPORTS RESERVATION STATUS FOR THE LOWER TWENTY MILES OF THE HOOPA EXTENSION

In Seymour v. Superintendent, supra, 368 U.S. 351 at 356-357, this Court looked at later laws to confirm its views about the 1906 Colville Act.[8] A similar examin- of subsequent statutes concerning the lower

8. Generally, subsequent legislation is not entitled to great weight in interpreting prior enactments. (United States v. Southwestern Cable Co., 392 U.S. 157, 170 (1968).

twenty miles of the Hoopa Extension supports continued reservation status for that area.

The Act of May 19, 1958 (72 Stat. 121) provided:

> "[v]acant and undisposed-of ceded lands...on the following named Indian reservations are hereby restored to tribal ownership... :...Klamath River, California
>
> * * *
>
> [S]uch lands are hereby added to and made a part of the existing reservations for such tribe or tribes."

The only way lands could be restored to tribal ownership "on" the "existing" Klamath River Reservation is if the lower twenty miles of the Hoopa Extension were part of a reservation in 1958. (See Seymour, supra, 368 U.S. 351 at 356-357 construing an indistinguishable Colville Reservation statute.) The denomination of that area as Klamath River rather than Hoopa Valley or Hoopa Extension in no way changes the statute's recognition of the lower twenty as part of an "existing reservation" and Indian country within the meaning of 18 U.S.C.§§1151 and 1162.

25 U.S.C. §348a (the Act of December 24, 1942, 56 Stat. 1081) also recognizes the reservation status of the lower twenty miles of the Extension. It provides in relevant part:

> "The period of trust on lands alloted to Indians of the Klamath River Reservation, California, which expired July 31, 1919,...is hereby reimposed."

The statute was enacted to broaden an Executive Order of September 23, 1919. That order extended the trust period for "allotments to Klamath River Indians on the Hoopa Valley Reservation." Twenty six allottes in the same area were not benefited by the order, however. The trust status of their allotments had already lapsed.

When this was discovered, the Secretary of the Interior wrote to Congress and explained the need to reimpose trust status on these twenty six allotments. (S.Rpt.No. 1714, 77th Cong., 2d Sess.) The Secretary quoted the Executive Order, which placed the allotments "on the Hoopa Valley Reservation." He also referred to the allotments as being on the Klamath River Reservation or the Klamath River Indian Reser-

vation, both of which phrases he equated with the description in the order, i.e., land allotted to Klamath River Indians "on the Hoopa Valley Reservation." He used all three terms interchangeably.

Congress then utilized the term Klamath River Reservation in the law as a short hand way of describing that portion of the Hoopa Valley Reservation occupied by the Klamath River Indians and now known as the lower twenty miles of the Hoopa Extension.

IV

TWO FEDERAL RULINGS SUPPORT RESERVATION STATUS FOR THE LOWER TWENTY MILES OF THE HOOPA EXTENSION

Jessie Short v. United States, supra, is a Court of Claims proceeding (No. 102-63) to determine whether Indians of the Hoopa Extension are entitled to share in proceeds from timber sales on the Hoopa Square. The main issue in that case is whether the Extension and the Square are one reservation.

On May 22, 1972, a Court of Claim's commissioner ruled that the Extension and the Square are one reservation.[9] The

9. The Court need not decide in this case if the Extension is part of the Hoopa Valley [footnote continued on next page]

commissioner then ruled that the lower twenty miles of the Extension are part of that reservation. (Slip Opinion at 111.) People born on the lower twenty after 1892 were held to have been born on the reservation. (Slip Opinion at 115 (¶ 209), 116 (¶¶ 213, 214).)

The commissioner's ruling is in accord with petitioner's view of the act of June 17, 1892, and totally inconsistent with the State's view.

Also supporting reservation status for the entire Extension is an Interior Department Decision. In Rights Of Indians In The Hoopa Valley Indian Reservation, California, 65 I.D. 59, the Interior Department's Deputy Solicitor wrote:

> "The former Klamath River Reservation and the connecting strip [i.e., the upper twenty miles of the Extension] are, technically, a part of the enlarged Hoopa Valley Reservation. (Id. at 64.)

A comparable Interior Department opinion Reservation. The Extension will be equally subject or not subject to state fishing laws under 18 U.S.C. §§1151 and 1162 whether it is a separate reservation or part of another.

was used in Seymour to support continued reservation status for the South Half of the Colville Reservation. (368 U.S. 351 at 357.)

V

BUREAU OF INDIAN AFFAIRS MAPS, BOTH FROM 1892 AND TODAY, SHOW THE LOWER TWENTY MILES OF THE EXTENSION AS PART OF A RESERVATION

The Bureau of Indian Affairs is the agency charged with the administration of Indian lands. Its view of this matter is relevant. (Seymour v. Superintendent, supra, 368 U.S. 351 at 357.)

An 1892 map prepared by the BIA shows the whole strip from the Pacific to the Hoopa Square as part of an Indian reservation, although the strip is there labeled as the Klamath River Reservation. (Sixty First Annual Report of the Commissioner of Indian Affairs to the Secretary of the Interior (1892).)

In 1932 the Superintendent of the BIA's Hoopa Agency testified before Congress that the Hoopa Square and the Extension from the square to the coast is all connected and all classed as one reservation, although the Square is called Hoopa

and the Extension is referred to as the Klamath. (Survey of Conditions of Indians in The United States, Hearings before a Subcommittee of the Senate Committee on Indian Affairs, Part 29 at 15531-15532 (1932), A.13-14.)

A Bureau of Indian Affairs map of Indian Land Areas as of 1971 shows the Hoopa Valley Extension Reservation as distinct from the Hoopa Valley Reservation but nevertheless running out to the Pacific. Copies of that map have been supplied to the Court by the Solicitor General, and a copy of the relevant portion of the map is Appendix A to Petitioner's Second Reply Brief in support of the petition for certiorari.

Other maps also show the entire 1891 Extension as a reservation. One such map is sheet 272 of the official National Atlas published by the Interior Department in 1970. Another is a Bureau of Land Management map (RESOURCES AND RECREATION, PUBLIC LANDS, CALIFORNIA, AFOOAMA-67/1910). A copy of the relevant part of that map is Appendix B to Petitioner's Second Reply Brief in support of the petition for certiorari.

Some maps from the Agriculture Department and even the Interior Department are in conflict with the above maps. (See Respondent's Supplemental Reply Brief.) This is not surprising in view of the complex legal history of the area; and no inferences against reservation status for the lower twenty miles of the Extension should be drawn from the inconsistent maps. (Cf. Seymour v. Superintendent, supra, 368 U.S. 351 at 356, fn. 12; New Town v. United States, supra, 454 F.2d 121 at 125-126.

The significant maps are those issued by the Bureau of Indian Affairs today and contemporaneously with the Act of June 17, 1892. Both such maps support reservation status for the area which once was included in the Klamath River Reservation and in 1891 was included in the Extension to the Hoopa Valley Reservation.

CONCLUSION

The Yuroks, like other Indians in California and elsewhere in the United States, live in conditions of poverty. Net fishing along the Klamath River affords them a way to supplement their diet and retain at least one aspect of their traditional life.

The Hoopa Extension is all that is left of the Yurok's land along the Klamath. It and the other reservation land in California constitutes only a minute part of the state. California's effort to further reduce the area where Indians may control their own fishing is totally unconscionable and not sactioned by the Act of June 17, 1892.

This Court should reverse the judgment below and remand for further proceedings consistent with the reservation status of the land where Raymond Mattz's nets were seized.

Dated: February 15, 1973

Respectfully submitted,

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By: _____
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APPENDIX A

Act of June 17, 1892, 27 Stat. 52

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all of the lands embraced in what was Klamath River Reservation in the State of California, as set apart and reserved under authority of law by an Executive Order dated November sixteenth, eighteen hundred and fifty-five, are hereby declared to be subject to settlement, entry, and purchase under the laws of the United States granting homestead rights and authorizing the sale of mineral, stone, and timber lands: Provided, That any Indian now located upon said reservation may, at any time within one year from the passage of this act, apply to the Secretary of the Interior for an allotment of land for himself and, if the head of a family, for the members of his family, under the provisions of the act of February eighth, eighteen hundred and eighty-seven, entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the

Territories over the Indians, and for other purposes," and, if found entitled thereto, shall have the same allotted as provided in said act or any act amendatory thereof: Provided, That lands settled upon, improved, and now occupied by settlers in good faith by qualified persons under the land laws shall be exempt from such allotment unless one or more of said Indians have resided upon said tract in good faith for four months prior to the passage of this act. And the Secretary of the Interior may reserve from settlement, entry, or purchase any tract or tracts of land upon which any village or settlement of Indians is now located, and may set apart the same for the permanent use and occupation of said village or settlement of Indians. And any person entitled to the benefits of the homestead laws of the United States who has in good faith prior to the passage of this act, made actual settlement upon any lands within said reservation not allotted under the foregoing proviso and not reserved for the permanent use and occupation of any village or settlement of Indians, with the intent to enter the same under the homestead law shall have the preferred right, at the expiration of said

period of one year to enter and acquire title to the land so settled upon, not exceeding one hundred and sixty acres, upon the payment therefor of one dollar and twenty-five cents an acre, and such settler shall have three months after public notice given that such lands are subject to entry within which to file in the proper land office his application therefor; and in case of conflicting claims between settlers the land shall be awarded to the settler first in order of time: Provided, That any portion of said land more valuable for its mineral deposits than for agricultural purposes, or for its timber, shall be entered only under the law authorizing the entry and sale of timber or mineral lands: And provided further, That the heirs of any deceased settler shall succeed to the rights of such settler under this act: Provided further, That the proceeds arising from the sale of said lands shall constitute a fund to be used under the direction of the Secretary of the Interior for the maintenance and education of the Indians now residing on said lands and their children.·

18 U.S.C. § 1151 (62 Stat. 757, as amended by 63 Stat. 94)

Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian county", as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

18 U.S.C. § 1162 (67 Stat. 588, as amended by 84 Stat. 1358)

(a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction

over offenses committed elsewhere within the State or Territory, and the criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

State or Territory of	Indian County Affected
Alaska.....	All Indian country within the State, except that on Annette Islands, the Metlakatla Indian community may exercise jurisdiction over offenses committed by Indians in the same manner in which such jurisdiction may be exercised by Indian tribes in Indian country over which State jurisdiction has not been extended.

California.....	All Indian country within the State
Minnesota.....	All Indian country within the State, except the Red Lake Reservation
Nebraska.....	All Indian country within the State
Oregon.....	All Indian country within the State, except the Warm Springs Reservation
Wisconsin.....	All Indian country within the State

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or com-

munity of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section as areas over which the several States have exclusive jurisdiction.